



Whitefish Lake
FIRST NATION #128

GOODFISH LAKE Box 271, Alberta, Canada T0A 1R0

January 23, 2013

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Via Email: fares.haddad@ercb.ca

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To Whom It May Concern:

**Re: Coal Valley Resources Inc., Robb Trend Project
ERCB Application No. 1725257
EPEA Application Nos. 00011006-02-00, 00011006-02-01 & 00011006-02-02**

The Whitefish (Goodfish) Lake First Nation #128 is a Treaty No. 6 First Nation ("WLFN"). Although WLFN's reserve lands are approximately 400 km from the Robb Trend Project (the "Project"), WLFN members make extensive use of the Project area, Local Study Area (the "LSA"), and Regional Study Area (the "RSA") (collectively referred to in this letter as the "Project Region") for Treaty hunting, gathering and fishing. This fact is well known to, (or ought to be known to) Alberta Environment and Sustainable Resource Development ("ASRD"). Even so, neither the Government of Alberta nor the Project proponent, Coal Valley Resources Inc. ("Coal Valley"), have notified WLFN about the Project or made any other efforts to consult with WLFN about the potential impacts of the Project on our Treaty rights and related traditional land uses in the Project Region. WLFN only became aware of the Project while reviewing the "Summary of environmental assessment activity - current projects" section of AESRD's website to review information about a different resource project.

As noted in Coal Valley's Project Description: "Hunting is active throughout the proposed mining area."¹ WLFN members hunt elk, moose, deer, bear and other animals in the Project Region, as well as Bighorn Sheep to the west of the Project. WLFN also has a long tradition of the Project Region serving as an important hunting area for seasonal hunting trips to provide for community and cultural celebrations. WLFN hunting trips to Project Region involve extended camping and members also often fish in the Athabasca, McLeod, Embarrass and Erith Rivers.

¹ Robb Trend Project, Project Description Document, October 2010. p.5.

WLFN members traditionally hunted grizzly bears in the Project Region but now refrain from this in the hopes that the population of this threatened species will someday recover.

An initial canvass of WLFN members by our Traditional Use Staff indicates that at least 31 WLFN hunters, and their friends and families, hunt, fish and camp in the Project Region. These hunters are listed below:

Darryl Steinhauer	Matthew Steinhauer	Leslie Cardinal
Marvin Steinhauer	Dominic Jackson	Tyson Cardinal
Blair Shirt	Brayton Shirt	Stanely Houle
Dan Houle	Ben Houle	Tom Houle
Alfred Houle	Michael Sunday	Leonard Houle
Darcy Houle	Lorne Shirt	Kelly Shirt
Collin Favel	George Bull	Pat Bull
Duane Bull	Wilfred Houle	Lenny Houle
Fred Cardinal	Randy Cardinal	Joe Cardinal
Russell Cardinal	Evan Steinhauer	Garret Steinhauer
Tom Jackson	Leon Cardinal	Vernon Whitford

Ned Seenum

WLFN is confident that a proper assessment of our member's use of the Project Region would document at least 100 WLFN members hunting, camping, fishing and engaging in other traditional land uses in the area.

In light of WLFN's extensive Treaty rights use of the Project Region, it is not surprising that over several decades our members have had frequent contact with AESRD field staff in the area. WLFN members have also registered many Bighorn Sheep kills with AESRD that were shot on hunting trips which emanated from hunting camps in the Project Region. Accordingly, had AESRD taken the time to confer with its field staff in the area, we have little doubt that WLFN Treaty rights use in the Project Region would not have been overlooked.

On a general level, WLFN is concerned with the ever diminishing amount of Crown land in the Treaty No. 6 region. Increasingly our members must make special efforts to hunt, fish and trap in areas that are further and further from our community. This concern has been expressed in a very formal way to the Government of Alberta in other consultation processes. The Project will

have direct and significant impacts on approximately 75km² (7500 ha) of Crown land. The right of the provincial Crown to take up lands for development under the Treaty is not limitless. Our Treaty rights to hunt, fish and trap cannot be rendered meaningless by development.

A preliminary review of the Project application documents by WLFN has raised very significant concerns about the Project. With regard to consultation it is clear that there simply has been no consultation with WLFN at all. There is no valid reason for the lack of consultation. The Project is within the Treaty No. 6 region. The Alberta Aboriginal Relations website provides list of the 18 Treaty No. 6 First Nations for the purpose of consultation, including WLFN. Yet there seems to be no indication, whatsoever, that Coal Valley made an effort to notify all of the Treaty No. 6 First Nations who possess rights in the Project Region. There is also nothing, it would seem, to indicate that Coal Valley asked AESRD which First Nations in the Treaty No. 6 region actively exercise Treaty rights in the Project Region. The traditional territory of WLFN encompasses the Project Region and we have provided our traditional territory map to the ERCB, AESRD, and other Government of Alberta officials more times than we can recall, including as evidence in other regulatory processes. A copy of that map is attached to this letter.

Our preliminary review of Coal Valley's Environmental Impact Assessment Report ("EIA") also raises significant concerns about the substantial adverse impacts to WLFN's Treaty rights in the Project Region, including at the least the following issues:

1. The EIA identifies several areas of impact to animals that are hunted by WLFN members. Adverse impacts on culturally important species will result from the Project due to: (1) habitat alteration, (2) sensory disturbance and effective habitat loss (3) habitat fragmentation, (4) direct mortality, and (5) barriers to movement.² The direction of impact is universally negative, and these impacts explained in the EIA itself demonstrate how the Project will further directly and adversely affect WLFN's Treaty rights.
2. Habit loss will be very high for number of key animal species.³ The LSA covers 10,090 ha and the Regional Study Area ("RSA") encompasses approximately 358,731 ha.⁴ Habitat alteration and very high habitat loss are listed Project effects. The majority of habitat alteration will come from land clearing, surface mining, road building, as well as other infrastructure developments.⁵ The mining activities will change lands in the Project area from closed forest to barren land and herb-dominated vegetation communities.⁶ WLFN is very concerned that these sweeping habitat loss and alteration resulting from the Project will negatively impact moose and elk populations, and many other animal populations, in the Project Region. Moose are a staple species for WLFN members and perhaps the most common ungulate sought by WLFN hunters. Elk are also highly sought after by WLFN

² Application, Section E.7.3, p. 116.

³ Application, Tables E.7-10, E.7-11, E.7-12, E.7-13.

⁴ Application, Section E.7.1, p. 105.

⁵ CR # 7, Section 5.1.1, p. 55.

⁶ *Ibid.*

hunters and are enjoyed at important cultural events and community feasts by WLFN members.

3. The EIA divides the species at risk into three categories: (i) species identified by Alberta Sustainable Resource Development as "at Risk, May be at Risk, and Sensitive"; (ii) species listed in *Canadian Species at Risk* ("COSEWIC"); and (iii) special status species under the *Species at Risk Act* ("SARA").⁷ The EIA identified 7 "Species of Concern" species with the LSA, by either provincial or federal authorities, namely, grizzly bear, bobcat, lynx, fisher, long-tailed weasel, wolverine, and badger.⁸ With the exception of grizzlies, as discussed below, many of these species are hunted opportunistically by WLFN in the course of hunting moose, elk and sheep.
4. Lynx are hunted opportunistically by WLFN members. Lynx has been listed as *sensitive* by the Alberta Fish and Wildlife Division (2010), meaning it is a species which requires special attention in an effort to protect it from becoming at risk.⁹ The greatest threat to the lynx are over-trapping and broad scale effects on populations of their key prey.¹⁰ As a result of the Project, lynx movement will be limited on the mine site until the requisite shrub or forest cover re-establishes, which will not occur until at least 10-25 years post construction.¹¹ WLFN has a direct interest in the protection of this culturally important species and the associated exercise of WLFN's rights.
5. WLFN also has concerns with respect to water hydrology and the impacts of the Project on the environment and fish and fish habitat due to increased emissions and other impacts on water bodies in the area used for traditional fishing purposes. Sediment and certain chemical contaminants that have chronic or lethal effects on aquatic biota will enter the aquatic ecosystem during mining.¹² The EIA notes that changes to physical habitat components, flow regime, water quality and access are all factors that affect fish habitat potential.¹³ These effects will directly and adversely affect WLFN's Treaty fishing rights.
6. Another important species to WLFN is the grizzly bear, which our members used to hunt but no longer do. Grizzlies are listed as *Special Concern* by COSEWIC (2011), as *At Risk* under the 2010 General Status evaluation, and as *Threatened* under the *Wildlife Act* (AFWD 2010).¹⁴ This animal is found throughout the LSA, and is at risk for direct mortality,

⁷ Application, Section E.3.7.1, p.96.

⁸ Application, Section E.3.8.2, p.98.

⁹ Application, Section E.7.3.3, p.120.

¹⁰ Application, Section E.7.4.3, p.128.

¹¹ Application, Section E.7.3.3, p. 122.

¹² Application, Section E.2.3.3, p.33.

¹³ Application, Section E.2.3, p.25.

¹⁴ Application, Section E.7.3.5, p. 124.

specifically direct human-caused mortality.¹⁵ Mistaken identity kills, defense for life and property, vehicle collisions and illegal hunting are all potential causes that threaten the grizzly bear. Areas with high density roads can act as a "mortality sink".¹⁶

The existing Coal Valley Mine has already significantly changed landscape structure, composition and food production in the permit area for grizzly bears.¹⁷ It is anticipated the Project will have the same effects. These effects threaten the grizzly bear species. The grizzly bear will be displaced from the Project mine footprint and permit area during the active mining period.¹⁸ Displacement of the grizzly bear will be a direct result of construction noise and blasting.¹⁹ The mined lands will act as a barrier to grizzly bears, and will act as a serious barrier during active blasting and hauling.²⁰

With the Project seriously compromising grizzly bear movement and habitat, it is clear that the Project will have a material effect on the grizzly bear. WLFN is concerned that the Project will demonstrably contribute to the extirpation of grizzly bears from this area of Alberta. Accordingly, as part of consultation on the Project, WLFN will be seeking a comprehensive plan from responsible federal and provincial ministries and Coal Valley to ensure that grizzly bears are able to survive and flourish in the Project Region.

WLFN is also concerned about caribou. Although caribou is a traditional food source, our members now mostly refrain from hunting caribou due to dwindling populations brought about by resource development in caribou ranges. We note that the South Jasper Caribou Herd's range area is very close to the Project Region. The Government of Alberta's Alberta Woodland Caribou Recovery Plan ("Caribou Plan") acknowledges that the South Jasper Herd has declined by an estimated 39% to 47% between 1988 and 2003, based on a mark/re-sight survey procedure."²¹ The Caribou Plan also notes that caribou range areas are only "approximate" so it is possible, given the proximity of the Project to the South Jasper Caribou Herd, that the Project might impact this herd.²² The Caribou Plan further concludes about this herd that the "historic winter range (**outside Jasper Park**) [is] dramatically altered by many human activities." (emphasis added)²³ The Plan also identifies caribou mortality resulting from vehicle collisions on Highway 40 as a reason for population decline. The Robb Trend Project and Coal Valley's existing operations are close to this highway and to Jasper Park, both of which suggests an impact on the South Jasper Herd is possible. However, the Caribou Plan acknowledges that the South Jasper Herd is not monitored so it may also be difficult, without significant further effort from relevant government ministries, to make a sound determination as to whether or not the Project will have an impact on the South Jasper Caribou Herd. Answering this question is critical.

¹⁵ *Ibid.*

¹⁶ CR #7, page 75.

¹⁷ Application, Section E, p.125.

¹⁸ Application, Section E.7.3.5, p.125.

¹⁹ *Ibid.*

²⁰ Application, Section E, p.126.

²¹ Alberta Woodland Caribou Recovery Plan, 2004/05 – 2013/14, p.5.

²² *Ibid.* p.4

²³ *Ibid.* p. 38.

The above comments and information only represent WLFN's very initial response to the proposed Project. We are deeply concerned about the impacts of this Project on WLFN's Treaty rights use in an area of Crown land that is a significant and preferred hunting ground for WLFN members. Accordingly, we call on Coal Valley, the Governments of Alberta and Canada, and the relevant regulatory bodies to take immediate action to address the fact that WLFN has been ignored with respect to the proposed Project, including if necessary, express confirmation that WLFN is permitted to file Statements of Concern or similar submissions regarding the Project despite the passage of any and deadlines for doing so.

Sincerely, <original signed by>

Per:

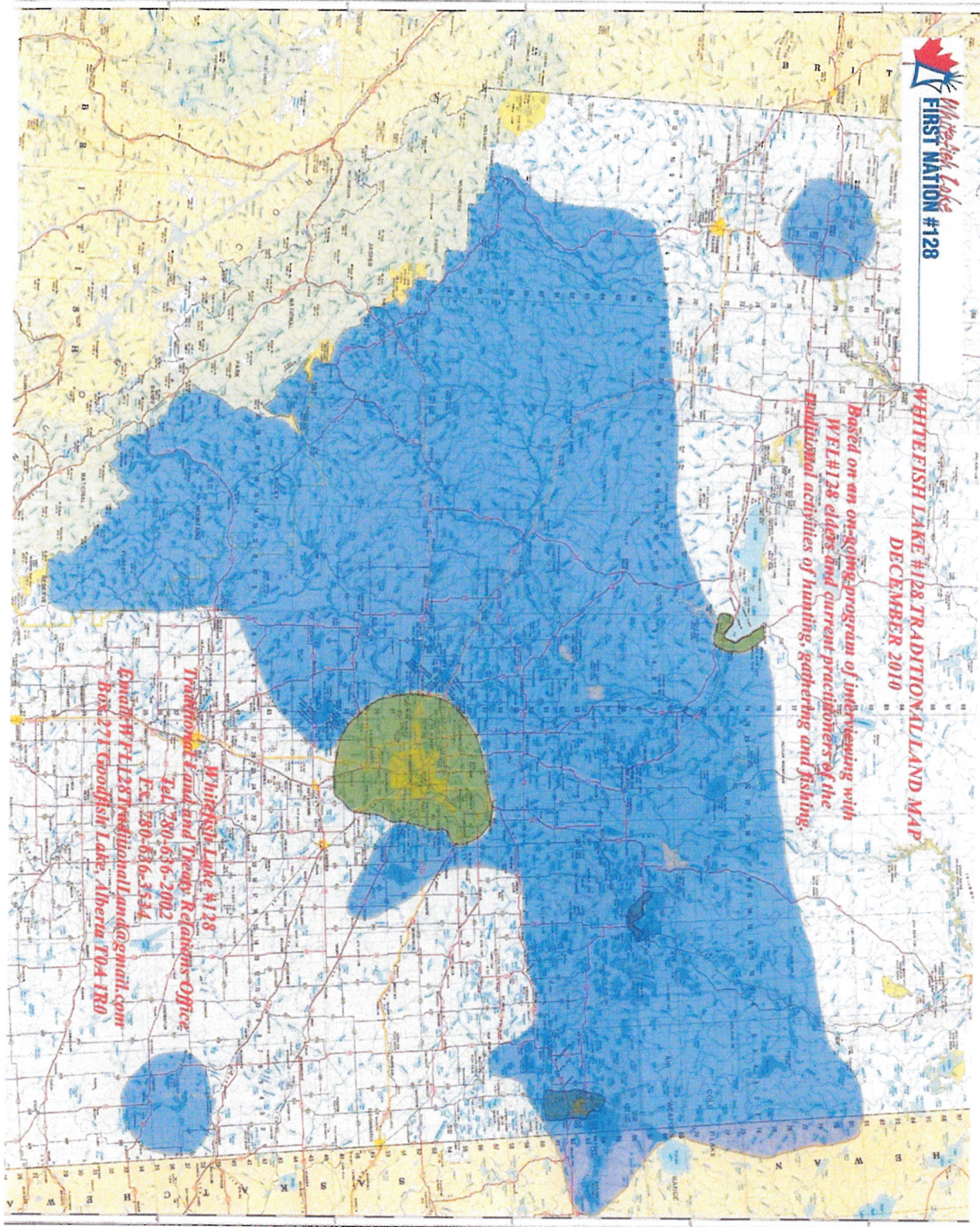
Darryl Steinhauer, Consultation Coordinator
Whitefish (Goodfish) Lake First Nation #128

CC: WLFN Chief and Council
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**WHITEFISH LAKE #128 TRADITIONAL LAND MAP
DECEMBER 2010**

*Based on an on-going program of interviewing with
WEL#128 elders and current practitioners of the
traditional activities of hunting, gathering and fishing.*



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